

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: GORDON W. ZIEMANN, JR.,
JUDITH I. ZIEMANN
fka JUDITH I. LANDRO,

BKY. No.: 04-32599
Chapter 13

Debtors.

**NOTICE OF HEARING AND
MOTION FOR RELIEF
FROM AUTOMATIC STAY**

TO: GORDON W. ZIEMANN, JR., JUDITH I. ZIEMANN AND THEIR
ATTORNEY, GREGORY J. WALD, ATTORNEY AT LAW, 3601
MINNESOTA DR., STE. 800, EDINA, MN 55435.

1. Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home
Mortgage, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion for
the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 20, 2004 at
10:30 A.M. in Courtroom No. 228B, at the United States Courthouse, at 316 North
Robert Street, in St. Paul, Minnesota, or as soon as counsel may be heard before The
Honorable Gregory F. Kishel, Chief Judge of the United States Bankruptcy Court.

3. Any response to this motion must be filed and delivered not later
September 15, 2004, which is three days before the time set for the hearing (excluding
Saturdays, Sundays and holidays), or filed and served by mail not later than September 9,
2004, which is seven days before the time set for the hearing (excluding Saturdays,
Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS
TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A
HEARING.

MOTION TO LIFT AUTOMATIC STAY

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on April 29, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtors that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage and assignment of mortgage, copies of which are attached hereto as Exhibits A & B, respectively.

6. That pursuant to the provisions of 11 U.S.C. §362, the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That pursuant to the Chapter 13 Plan confirmed on June 25, 2004 the Debtors were to make all current monthly payments due on said mortgage outside of the plan.

b) To date, the Debtors are in default on said payments from July 1, 2004 to date in the amount of \$1,132.97 per month, plus post-petition late charges.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Movant, Wells Fargo Bank, N.A. successor by merger to Wells

Fargo Home Mortgage, Inc., by its undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to foreclose its security interest, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: August 27, 2004

By: /e/Thomas J. Reiter
Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262/231605
(D1731)

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.

VERIFICATION

I, Karan Abernethy, Bankruptcy Supervisor with Wells Fargo Bank, N. A., declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: August 27, 2004.

WELLS FARGO BANK, N.A.

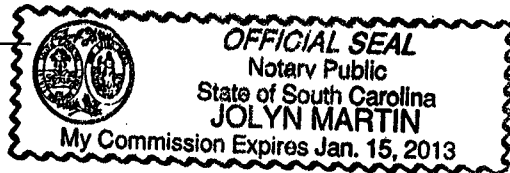
By: Karan Abernethy
Karan Abernethy

Its: Bankruptcy Supervisor

Subscribed to and sworn before me this

27 day of August, 2004

J. Martin
Notary Public



0900
20-
06

DOC# 3693392
Certified Recorded On
OCT. 29, 2003 AT 01:00PM

OFFICE CO. RECORDER
RAMSEY COUNTY MN

Fee Amount: \$20.00



RAMSEY COUNTY

Receipt No: 57479 Date: 10/21/2003
Registration tax hereon of \$378.42 Paid
MN Conservation Fund M.S. 473H \$5.00 Paid
Dorothy A. McClung, Auditor by Cgjohnson

LOAN NO.: 0029787256

[Space Above This Line For Recording Data]

Return to Burnet Title **MORTGAGE**

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated together with all Riders to this document.

JULY 24, 2003

(B) "Borrower" is

JUDITH I. ZIEMANN AND GORDON W. ZIEMANN, JR., WIFE AND HUSBAND

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is MARKETPLACE HOME MORTGAGE, LLC.

Lender is a

organized and existing under the laws of
Lender's address is 3600 MINNESOTA DR. #150
EDINA, MN 55435

THE STATE OF MINNESOTA

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated

JULY 24, 2003

The Note states that Borrower owes Lender

ONE HUNDRED FIFTY-SEVEN THOUSAND SIX HUNDRED SEVENTY-FIVE AND 00/100

Dollars (U.S. \$ 157,675.00

) plus interest. Borrower has promised to pay this debt in regular

Periodic Payments and to pay the debt in full not later than

AUGUST 1, 2033

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

MINNESOTA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3024 1/01

Laser Forms Inc. (800) 446-3555

LFI #FNMA3024 1/01 (A)

3-44522 343872

Page 1 of 13

Initials

13 28

1-13

A

06

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

JUDITH I. ZIEMANN (Seal)
-Borrower

GORDON W. ZIEMANN, JR. (Seal)
-Borrower

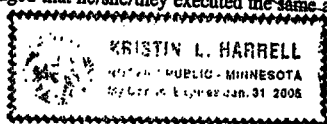
(Seal)
-Borrower

(Seal)
-Borrower

STATE OF MINNESOTA, [Specs Below This Line For Acknowledgment] HENNEPIN County ss:

On this 24TH day of JULY, 2003, before me appeared JUDITH I. ZIEMANN AND GORDON W. ZIEMANN, JR., WIFE AND HUSBAND

to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he/she/they executed the same as his/her/their free act and deed.



- Notary Public

My Commission expires:

This instrument was prepared by:
MARKETPLACE HOME MORTGAGE, LLC
3600 MINNESOTA DRIVE #150
EDINA, MN 55435
952/831-3111

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the COUNTY of RAMSEY:

LOT 4, BLOCK 2, RAMALEY'S PARK.

which currently has the address of

1958 BIRCH LAKE AVENUE
(Street)

WHITE BEAR LAKE

, Minnesota

55110
(Zip Code)

("Property Address"):

TOGETHER WITH all the improvements now or hereafter made

0270
20
06

DOC# 3693393

Certified Recorded On
OCT. 29, 2003 AT 01:00PM

OFFICE CO. RECORDER
RAMSEY COUNTY MN

Fee Amount: \$20.00



Assignment of Real Estate Mortgage/Deed of Trust

Return to Burnet Title

Loan #: 0029787256

FOR VALUE RECEIVED the undersigned hereby grants, assigns and transfers to:

2- Wells Fargo Home Mortgage, Inc.,
a California Corporation
It's Successors and/or Assigns
800 Marquette Avenue South
Minneapolis, MN 55402

All the rights, title and interest of undersigned in and to that certain Real Estate Mortgage/Deed of Trust dated JULY 24, 2003 executed by JUDITH I. ZIEMANN AND GORDON W. ZIEMANN, JR., WIFE AND HUSBAND

To MARKETPLACE HOME MORTGAGE, LLC.
A Limited Liability Company organized under the laws of Minnesota
And whose principal place of business is 3600 Minnesota Drive, Suite 150, Edina, MN 55435
And recorded in RAMSEY County Records as Document # 3693392
State of MINNESOTA described hereinafter as follows:

LOT 4, BLOCK 2, RAMALEY'S PARK.

Commonly known as: 1958 BIRCH LAKE AVENUE, WHITE BEAR LAKE, MN 55110

TOGETHER with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued under said Real Estate Mortgage/Deed of Trust.

STATE OF MINNESOTA

✓ MARKETPLACE HOME MORTGAGE, LLC

COUNTY OF HENNEPIN

Doris Carlson

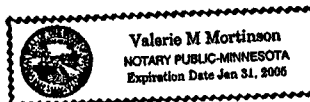
BY: DORIS CARLSON
ITS: ASSISTANT SECRETARY

On JULY 24, 2003 before me, the undersigned, a Notary Public in and for said County and State, personally appeared DORIS CARLSON known to me to be the ASSISTANT SECRETARY and known to me to be of the Limited Liability Company herein which executed the within instrument, that said instrument was signed on behalf of said Limited Liability Company pursuant to its by-laws or a resolution of its Board of Directors and that he/she acknowledges said instrument to be the free act and deed of said Limited Liability Company.

Drafted By:
Marketplace Home Mortgage, LLC
3600 Minnesota Drive, Suite 150
Edina, MN 55435

Notary Public

Valerie M Mortinson



3-44522 313872

H-1
B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: GORDON W. ZIEMANN, JR.,
JUDITH I. ZIEMANN
fka JUDITH I. LANDRO,

BKY. No.: 04-32599
Chapter 13

Debtors.

**AFFIDAVIT OF MOVANT'S
BANKRUPTCY SUPERVISOR**

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Karan Abernethy, being duly sworn on oath states:

1. That I am a Bankruptcy Supervisor in the Bankruptcy Department for Wells Fargo Bank, N.A. in the Fort Mill, South Carolina servicing center. In my capacity as a Bankruptcy Supervisor, I have had the opportunity to review the mortgage account of the Debtors.

2. That pursuant to the Chapter 13 Plan confirmed on June 25, 2004 the Debtors were to make all current monthly payments due on said mortgage outside of the plan.

3. That to date, the Debtors are in default on said payments from July 1, 2004 to date in the amount of \$1,132.97 per month, plus post-petition late charges.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

WELLS FARGO BANK, N.A.

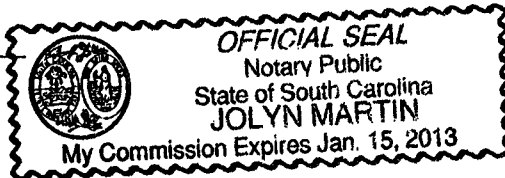
Dated: August 27, 2004

By: Karan Abernethy
Karan Abernethy
Bankruptcy Supervisor
3476 Stateview Blvd.
Fort Mill, SC 29715

Subscribed to and sworn before me this

27 day of August, 2004

Maur
Notary



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: GORDON W. ZIEMANN, JR.,
JUDITH I. ZIEMANN
fka JUDITH I. LANDRO,

BKY. No.: 04-32599
Chapter 13

Debtors.

**MEMORANDUM IN SUPPORT
OF MOTION FOR RELIEF
FROM THE AUTOMATIC STAY**

MEMORANDUM OF LAW

I. Factual Background

The Debtors filed their petition herein on April 29, 2004 under Chapter 13 of the Federal Bankruptcy Code and listed real property located in Ramsey County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lot 4, Block 2, Ramaley's Park.

The amount due under said mortgage loan was approximately \$162,000.00. Pursuant to the Chapter 13 Plan confirmed on June 25, 2004 the Debtors were to make all current monthly payments due on said mortgage outside of the plan. The Debtors are in default on said payments from July 1, 2004 to date in the amount of \$1,132.97 per month, plus post-petition late charges.

II. Argument

**GOOD CAUSE EXISTS TO GRANT THE MOVANT
RELIEF FROM THE STAY FOR CAUSE.**

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following

conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtors have failed to meet their contractual obligation in making payments as they become due after the filing of this petition, and such a failure constitutes “cause” entitling the Movant to relief from the automatic stay under 11 U.S.C. §362 (d)(1). A continued failure by a debtor to maintain regular payments to a secured creditor is sufficient “cause” to entitle a creditor to relief from stay. In re Whitebread, 18 B.R. 193 (Bkrcty. D. Minn. 1982); In re Keays, 36 B.R. 1016 (Bkrcty. E.D. Pa. 1984); In re David, 64 B.R. 358 (Bkrcty. S.C.N.Y. 1986).

In view of the Debtors’ inability to make payments toward their loan obligation, the Movant's interest in the real property of the Debtors is not adequately protected. A continuing default by the Debtors will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtors is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtors. The Debtors’ offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

CONCLUSION

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: August 27, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262
(D1731)

UNITED STATES BANKRUPTCY COURT
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UNSWORN DECLARATION FOR PROOF OF SERVICE

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The St. Paul Building, 6 West 5th St., St. Paul, Minnesota 55102 declares that on August 30, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Jasmine Z. Keller
Trustee
12 S. 6th St., Ste. 310
Minneapolis, MN 55402

United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Gordon W. Ziemann, Jr.
Judith I. Ziemann
1958 Birch Lake Ave.
White Bear Lake, MN 55110

Gregory J. Wald
Attorney at Law
3601 Minnesota Dr., Ste. 800
Edina, MN 55435

And I declare, under penalty of perjury, that the foregoing is true and correct.

REITER & SCHILLER

Dated: August 30, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

The Academy Professional Building

25 North Dale Street, 2nd Floor

St. Paul, MN 55102-2227

(651) 209-9760

Attorney Reg. 152262

(D1731)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: GORDON W. ZIEMANN, JR.,
JUDITH I. ZIEMANN
fka JUDITH I. LANDRO,

BKY. No.: 04-32599
Chapter 13

Debtors.

ORDER TERMINATING STAY

This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on September 20, 2004 in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota. The movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Lot 4, Block 2, Ramaley's Park
Ramsey County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: _____

The Honorable Gregory F. Kishel
Chief Judge of U.S. Bankruptcy Court